

BY

Brook

S.B. NO.

969

A BILL TO BE ENTITLED
AN ACT

relating to the prevention of land subsidence through the prohibition and regulation of the withdrawal of underground water and the authorization of the Texas Water Rights Commission to enforce and carry out the provisions of this Act; amending the Texas Water Code by adding a Chapter 7; prescribing violations and civil penalties; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. The Texas Water Code is amended by adding a Chapter 7 to read as follows:

"SUBCHAPTER A. GENERAL PROVISIONS

"Short Title

"Section 1.01. This Chapter may be cited as the Texas Land Subsidence Act.

"Policy and Purpose

"Section 1.02. It is the policy of this state and the purpose of this Act to safeguard the health, general welfare and physical property of the people, including its esthetic enjoyment, in areas of the state that are subject to subsidence by prohibiting or controlling the removal of subterranean waters consistent with the economic welfare of the state. The Legislature finds that in large areas of this state along the gulf coast, the health and general welfare and physical property of the people are endangered by the subsidence of the land at an alarming rate as the result of the unregulated removal of subterranean waters. Such subsidence has made said land subject to flooding from surface waters and inundation by salt waters, has damaged structures and physical

property located thereon, and has subjected the people and property located therein to greater dangers and hazards from storms, hurricanes and other natural disasters.

"COMMISSION AS PRINCIPAL AUTHORITY

"Section 1.03. The Texas Water Rights Commission, hereinafter called "the commission", is the principal authority in the state on matters relating to the quantity and use of subterranean water resources in areas of the state subject to subsidence and for setting standards, criteria, levels and limits on the removal and use of such subterranean water resources.

"SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

"In General

"Sec. 2.01. The commission shall enforce, effectuate and administer the provisions of this Act and shall establish the level or quantity of subterranean water resources which may be withdrawn in areas or regions of the state that the commission may designate, and shall control the quantity, manner of withdrawal and use of the subterranean water resources in this state as provided in this Act. The commission shall seek the accomplishment of the purposes of the Act through the prohibition or control of the removal and use of subterranean water resources by all practical and economically feasible methods consistent with the powers and duties of the commission. The commission has the powers necessary or convenient to carry out its responsibilities.

"STATE SUBSIDENCE ABATEMENT PLAN

Sec. 2.02. The commission shall prepare and develop a general, comprehensive plan for the proper control of subsidence in the state by the prohibition or control of the removal of subterranean waters in this state. The commission is authorized to designate regions of the state affected by subsidence based on jurisdictional boundaries, urban-industrial concentrations, and other factors, including the location of bodies of surface waters necessary to provide an adequate substitute or supplement to the subterranean water resources.

"Emission Inventory

"Sec. 2.03. The commission is authorized to require the submission of information by persons who remove, use or adversely affect the subterranean water resources in the areas of the state designated by the board as subject to subsidence.

"Power To Investigate And Enter Property

"Sec. 2.04. The commission shall conduct, or have conducted any investigations it considers advisable and necessary for the discharge of its duties under this Act. The members, employees and agents of the commission have the right to enter any public or private property at reasonable time, other than property designated for and used exclusively as a private residence housing nor more than three families where such subterranean waters are used exclusively thereon for domestic or residential purposes, for the purpose of inspecting and investigating conditions relating to the removal of subterranean waters in the areas of the state designated by the commission as subject to subsidence. Any member, employee or agent who, acting under the authority in this section, enters private property which has management in residence shall notify management, or the person then in charge, of his presence and exhibit proper credentials. Members, employees, or agents entering private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection. Should any member, employee or agent of the commission be refused the right to enter in or upon such public or private property, the commission may have the remedies authorized in Sec. 4.02 of this Act.

"Monitoring Requirements; Power To Examine Records

Sec. 2.05. The commission may prescribe reasonable requirements for the measurement and monitoring of the quantity of subterranean water removed from any source or from any activity subject to the jurisdiction of the commission under this Act; the commission may also prescribe reasonable requirements for the owner or operator of the source to make and maintain records on the measurement and monitoring of subterranean water. The members, employees and agents of the commission may examine during regular business.

hours any records or memoranda pertaining to the operation of any subterranean water well or source. This authority does not extend to the records or memoranda pertaining to the operation of such equipment or facility on a property designated for and used exclusively as a private residence housing not more than three families where such subterranean waters are used exclusively thereon for domestic or residential purposes.

"Contracts, Instruments

Sec. 2.06. The commission may make contracts and execute instruments that are necessary or convenient to the exercise of its powers or performance of its duties. The commission may execute cooperative agreements with any other state or local government or agency or any federal agency to provide for the inspection of subterranean water sources and enforcement functions, to provide technical aid and educational services to any party to the agreement; and for the transfer of money or property from any party to the agreement to another for the purpose of subterranean water management, inspection, enforcement, technical aid and education.

"Sec. 2.07. The commission shall:

"(1) encourage voluntary cooperation by persons, or affected groups in the restoration, control and preservation of the subterranean water resources within this state;

"(2) encourage and conduct studies, investigations and research concerning subsidence and the restoration, preservation and control of subterranean waters;

"(3) collect and disseminate information on subsidence and the restoration, preservation and control of subterranean waters;

"(4) advise, consult and cooperate with other agencies of the state political subdivisions of the state, industries, other states and the federal government, and with interested persons or groups in regard to matters of common interest in subsidence.

"(5) encourage the development and availability of alternate or supplemental sources of surface waters at competitive rates.

"Gifts and Grants

"Sec. 2.08. The commission may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out its duties. The commission shall show in its records the source of all moneys or other things of value received by the commission under this section from sources other than public sources.

"Special Fund

"Sec. 2.09. Money received by the board under Section 2.07 of this Act shall be deposited in the state treasury and credited to a special fund. The commission may use this fund for salaries, wages, professional and consulting fees, travel expenses, equipment, and other necessary expenses incurred in carrying out its duties under this Act, as provided by legislative appropriation.

"Documents, etc., Public Property

"Sec 2.10. All information, documents and data collected by the commission in the performance of its duties are the property of the state. All records of the commission are public records open to inspection by any person during regular office hours.

"Copies of Documents, Proceedings, etc.

"Sec. 2.11. On the application of any person, the commission shall furnish certified or other copies of any proceeding or other official act of record, or of any map, paper, or document filed with the commission. A certified copy with the seal of the board and the signature of the chairman of the commission or the executive director is admissible as evidence in any court or administrative proceeding. The commission shall prescribe in its rules the fees which shall be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Any other Acts concerning fees for copies of records do not apply to the commission except that the fees set by the commission for copies prepared by the commission shall not exceed

those prescribed in Article 3913, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 446, Acts of the 59th Legislature, Regular Session, 1965.

"Biennial Reports

"Sec. 2.12. The commission shall make biennial written reports to the governor and to the Legislature and shall include in each report a statement of its activities.

"Fees

"Sec. 2.13. Except as specifically authorized in this Act, no fees may be charged by the executive secretary or the commission for the performance of any of their duties and functions under this Act.

"Enforcement Proceedings

"Sec. 2.14. The commission, or the executive director when generally or specifically authorized by the commission, may cause legal proceedings to be instituted in courts of competent jurisdiction to compel compliance with the provisions of this Act or the rules, regulations, orders, permits or other decisions of the commission.

"Rule-Making

"Sec. 2.15. (a) The commission has the power, in accordance with the procedures in this section, to make rules and regulations consistent with the general intent and purposes of this Act and to amend any rule or regulation it makes.

"(b) Before adopting the state abatement plan or otherwise designating areas of the state subject to this Act, or any rules and regulations, or any amendment or repeal thereof, the commission shall hold a public hearing. Notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days prior to the scheduled date of the hearing in a newspaper or newspapers whose combined circulation will, in the judgment of the commission, give reasonable circulation throughout the area of the state. The commission shall also comply, as appropriate, with the requirements of Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes).

"(c) Any person may appear and be heard at the hearing on any plan, rules or regulations. A record of the names and addresses of the persons appearing shall be made by the executive director. Any person heard or represented at the hearing, or requesting notice of the action taken by the commission, shall be sent written notice by mail of the action taken by the commission.

"(d) Before it becomes effective, any rule or regulation, or amendment or repeal thereof, shall be approved in writing by at least two members of the commission, and a certified copy filed with the secretary of state for the time specified in Article 6252-13, Vernon's Texas Civil Statutes.

"Content of Rules

"Sec. 2.16. (a) A rule or regulation, or any amendment thereof, adopted by the commission may differ in its terms and provisions as between particular conditions, particular sources, and particular areas of the state. In adopting rules and regulations, the commission shall give due recognition to the economic welfare of each area and of the state and the availability of surface water sources at competitive prices, and to the fact that the quantity or characteristic of subterranean water, the uses therefore and the degree of severity of subsidence, which may cause a need for control in one area of the state, may not cause need control in another area of the state; and the commission shall take into consideration, in this connection, all factors found by it to be proper and just including existing physical conditions, topography, population and the availability and adequacy of sources of surface waters, and the fact that a rule or regulation and the degrees of conformance therewith which may be proper as to an essentially residential area of the state may not be proper either as to a highly developed industrial area of the state or as to a relatively unpopulated area of the state. The commission is authorized to adopt rules and regulations to control, regulate and prohibit the removal of subsurface waters. The commission may include in the rules and regulations requirements as to the

particular uses and priority of uses, but greatest priority shall be given to domestic or residential use.

"Sec. 2.17. The commission is authorized to enter orders and determinations as may be necessary to effectuate the purposes of this Act.

"Factors to be Considered

"Sec. 2.18. In making orders and determinations, the commission shall consider all of the facts and circumstances bearing upon the reasonableness of any emissions being made, including:

"(1) the character and degree of subsidence, and the injury to, or interference with, the health and physical property of the people;

"(2) the social and economic value of the source of the subterranean waters;

"(3) the technical practicability and economic reasonableness of reducing or eliminating the use and need for subterranean waters.

"(4) the quantity and availability of subterranean waters;

"(5) the quantity and availability of surface waters at competitive prices.

"Hearing Powers

"Sec. 2.19. The commission may call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering the provisions of this Act or the rules, regulations, orders or other actions of the commission.

"(a) The commission may delegate the authority to hold hearings called by the board to the executive director or one or more employees of the commission:

"(b) Notice of the hearing shall describe briefly and in summary form the purpose of the hearing and the date, time, and place of the hearing.

"(c) Notice of the hearing shall be published at least once in a newspaper regularly published or having general

circulation in each county where by virtue of the county's geographical relation to the subject matter of the hearing, the commission has reason to believe persons reside who may be affected by the action that may be taken as a result of the hearing. The date of the publication shall be not less than 20 days before the date set for the hearing.

"(d) If notice of the hearing is required by this Act to be given to a person, the notice shall be served personally or mailed to the person at his last address known to the commission not less than 20 days before the date set for the hearing. If the party is not an individual, the notice may be given to any officer, agent or legal representative of the party.

"(e) The individual or individuals holding the hearing (hereafter in this subsection called the hearing body) shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing new notice. If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the hearing body at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed in Subsection (d) of this section at a reasonable time prior to the new setting, but it is not necessary to publish a newspaper notice of the new setting.

"Investigations; Action on Violations

"Sec. 2.20. (a) The executive director is authorized to make or cause to have made investigations as he may deem advisable in administering the provisions of this Act and the rules, regulations, orders and determinations of the commission including without limitation investigations of violations and general subsidence problems or conditions. The executive director shall make or cause to have made such investigations as may be requested or directed by the commission.

"(b) Whenever it appears that any provision of this Act or any rule, regulation, determination or order of the commission is being violated, the board, or the executive director when authorized by the commission or this Act, may proceed under Section 4.02 of this Act, or hold a public hearing and enter orders on the alleged violation, or take any other action authorized in this Act as the facts may warrant.

"(c) If a public hearing is held on an alleged violation, the commission or the executive secretary shall give notice of the hearing to the person complained against and to such other interested persons as the commission or executive secretary may designate. The executive secretary, on behalf of the commission, at the request of the person complained against, shall subpoena and compel the attendance of those witnesses, and shall require the production for examination of any book or paper relating to the matter under investigation at the hearing, as that person may reasonably designate.

"SUBCHAPTER C. PERMITS

"Sec. 3.01. Within sixty days after the effective date of the commission's order establishing a state plan for the abatement of subsidence and determining the area or areas of the state affected by subsidence, every owner or operator of a source of subterranean water or well or other facility for the withdrawal of subterranean waters in the area or areas so designated, must apply for a permit with the commission and may continue to operate the well or source without a permit until the application for a permit is acted upon by the commission.

"Commission May Grant Permits

"Sec. 3.02. The commission may grant permits for the removal or withdrawal of subterranean waters within the area designated by the board, whenever it is found upon presentation of adequate

proof that there is no other adequate and available substitute or supplemental sources of surface waters at competitive prices, and that compliance with any provision of this Act, or any rule or regulation of the commission, will result in an arbitrary taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people.

Any person seeking a permit or to amend a permit shall submit a petition to the executive director containing all information reasonably required by the commission or the executive director.

"Action on Petition

"Sec. 3.03. (a) The executive director shall mail a copy of the permit petition or a summary of its contents to the mayor of the city or town, and the county judge of the county, in which the source or sources are or will be located, and to the same officials of other counties, cities and towns which, in the judgment of the executive director or the commission, may be affected. The information shall be sent not less than 20 days before the date on which the petition is to be considered by the commission.

"(b) The executive director shall also proceed promptly to investigate the petition and to make a recommendation to the commission on the disposition to be made of it.

"(c) Any person may file with the commission his comments or recommendations on the requested permit.

"(d) Upon receiving the recommendation of the executive director, the commission may, if the recommendation is for the granting of a permit, do so without hearing. If the executive director recommends against the granting of the permit, if a local government requests a hearing, or if the commission in its discretion concludes that a hearing would be advisable, then a hearing shall be held before the commission acts on the petition for a permit.

"Conditions of Permits

"Sec. 3.04. (a) In determining under what conditions and to what extent a permit may be granted, the commission shall give due recognition to the progress which the person requesting

the permit has made in controlling or limiting the use of subterranean waters and in seeking in good faith available sources of surface waters at competitive prices.

"(b) In each permit, the commission, in conformity with the intent and purpose of this Act to protect health and property, shall prescribe the conditions with which the holder of the permit shall comply, including:

"(1) the duration of the permit;

"(2) the extent of the abatement or elimination of the use of subterranean waters to be accomplished over a stated period of time, which shall be the time the commission considers reasonable under the circumstances;

"(3) any requirements as to the submission of periodic reports on the progress which the holder of the permit makes toward compliance with the Act or any rule or regulation as to which the permit has been granted; and

"(4) the use to be made of the subterranean water;

"(5) a quote or limitation upon the quantity of subterranean waters that may be removed;

"(6) a phasing out, or periodic reduction in the quantity and use of subterranean water; and

"(7) any other condition the commission deems reasonable and necessary.

"(c) After a public hearing, notice of which shall be given to the holder of the permit, the commission may require the holder of a permit, from time to time, for good cause, to conform to new or additional conditions. The commission shall allow the holder a reasonable time to conform to the new or additional conditions and, on application of the holder, the commission may grant additional time.

"(d) A permit does not become a vested right in the holder; and it may be revoked or suspended for good cause, after a public hearing, notice of which shall be given to the holder of the permit, on any of the following grounds:

"(1) the holder has failed or is failing to comply with the conditions of the permit;

"(2) the permit or operations under the permit have been abandoned; or

"(3) the permit is no longer needed by the holder.

"(e) The notice required by Subsections (c) and (d) of this section shall be sent to the holder of the permit at his last known address as shown by the records of the commission

"Effect of Filing a Permit Petition After Sixty-Day Period

"Sec. 3.05. The filing of a petition for permit or to amend a permit, or of a request to extend a permit after the expiration of sixty days from the effective date of the commission's order establishing a state plan for the abatement of subsidence and determining the area or areas of the state affected by subsidence, does not serve to abate any suit by the commission or any hearing, investigation, or other proceeding which the commission may then have in process or may thereafter initiate. The granting of a permit or amendment to a permit, or of an extension of a permit shall operate to authorize the removal of subterranean waters beyond the limitations prescribed in this Act or in the rules and regulations of the commission from the effective date of the commission's action, but only for the period and to the extent specified in the commission's order.

"Sec. 3.06. Upon the failure of the commission to take action within 120 days after receipt in proper form of a petition for permit or to amend a permit, or of a request to extend a permit, filed after the expiration of the sixty days from the effective date of the commission's order establishing a state plan for the abatement of subsidence and determining the area or areas of the state affected by subsidence, the petitioner shall be entitled to assume that his petition has been denied, and he may perfect an appeal on this basis in the manner provided in Section 6.01 of this Act. However, until such time as the petitioner files his appeal in the manner provided in Section 6.01 of this Act, the commission shall continue to have jurisdiction to act on the petition.

"SUBCHAPTER D. PROHIBITION AGAINST THE REMOVAL
SUBTERRANEAN WATERS SO AS TO CAUSE A CONDITION
OF SUBSIDENCE: ENFORCEMENT

"Sec. 4.01. (a) Except as authorized by a rule, regulation, permit or other order of the commission, no person may cause, suffer, allow or permit the removal or withdrawal of subterranean waters so as to cause the subsidence of the level of land in this state not belonging to such person, and to thereby adversely affect, endanger or threaten injury to human health or welfare, animal life, vegetation or property, or to interfere with the normal use and enjoyment of animal life, vegetation or property.

"(b) No person may cause, suffer, allow or permit the removal or withdrawal of any subterranean water in violation of this Act or of any rule, regulation, permit or order of the commission.

"(c) Any person who violates any provision of this Act or of any rule, regulation, permit, or other order of the commission is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation and for each act of violation, as the court may deem proper, to be recovered in the manner provided in this Subchapter.

"Enforcement by Commission

"Sec. 4.02. (a) Whenever it appears that a person has violated or is violating, or is threatening to violate any provision of this Act or of any rule, regulation, permit or other order of the commission, then the commission, or the executive director when generally or specifically authorized by the commission, may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation and for each act of violation, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or of any rule, regulation, variance or other order of the commission, the district court shall grant the injunctive relief the facts may warrant.

"(b) At the request of the commission, or the executive director when authorized by the commission, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

"Venue and Procedure

"Sec. 4.04. (a) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs.

"(b) In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, regulation, permit or other order of the commission, the court may grant the commission, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

"(c) A suit brought under this Act shall be given precedence over all other cases of a different nature on the docket of the trial or appellate court.

"(d) Either party may appeal from a final judgment of the court as in other civil cases.

"(e) All civil penalties recovered in suits instituted by the State of Texas under this Act shall be paid to the general revenue fund of the State of Texas.

"Act of God, War, etc.

"Sec. 4.05. The liabilities which would otherwise be imposed by this Act upon persons violating any provision of this Act or of any rule, regulation, permit, determination or order issued under this Act shall not be imposed due to any violation caused by an act of God, war, strike, riot or other catastrophe.

"SUBCHAPTER F. JUDICIAL REVIEW

"Appeal of Board Action

"Section 5.01. (a) A person affected by any ruling, order, decision, or other act of the commission may appeal by filing a petition in a district court of Travis County.

"(b) The petition must be filed within thirty days after the date of the commission's action, or, in case of a ruling, order or decision, within thirty days after its effective date.

"(c) Service of citation on the commission must be accomplished within thirty days after the date the petition is filed. Citation may be served on the executive director or any member of the commission.

"(d) The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

"(e) In an appeal of a commission action other than cancellation or suspension of a permit, the issue is whether the action is invalid, arbitrary, or unreasonable.

"(f) An appeal of the cancellation or suspension of a permit shall be tried in the same manner as appeals from justice court to the county court.

"SUBCHAPTER G. ADVISORY COMMITTEE

"Sec. 6.01. An advisory board is established to advise the commission upon any matter that the advisory board deems important or necessary, and to perform such other duties as the commission may authorize. The advisory board is composed of six members: One member shall be a representative of the governor, one member shall be the executive director of the Texas Water Development Board or his representative, one member shall be the director of the Houston-Galveston Area Council or his representative. The governor, without the advise and consent of the senate,

shall appoint three interested private citizens, residing within the area or areas affected by subsidence, as members to serve for one year.

"Sec. 6.02. The commission may permit the advisory board to attend and participate in any hearings or meetings of the commission.

"Sec. 7. EMERGENCY CLAUSE. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

AN ACT relating to the prevention of land subsidence through the prohibition and regulation of the withdrawal of underground water and the authorization of the Texas Water Rights X Commission to enforce and carry out the provisions of this act.

3-14-75 Filed with the Secretary of the Senate

MAR 17 1975 Read, referred to Committee on **NATURAL RESOURCES**

Reported favorably. _____

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed. _____

Senate and Constitutional Rules to permit consideration suspended by

{ unanimous consent.
{ _____ yeas, _____ nays.

To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____yeas, _____nays.

Read second time and { ordered engrossed.
passed to third reading.

Caption ordered amended to conform to body of bill.

Senate and Constitutional 3-Day Rules suspended by vote of _____yeas, _____nays to place bill on third reading and final passage.

Read third time and passed by { a viva-voce vote.
_____ yeas, _____ nays.

OTHER ACTION:

Secretary of the Senate

Engrossed

Sent to HOUSE

ENGROSSING CLERK